

A GUIDE
LEGAL

FOR DRAFTING
CONTRACTS

صياغة العقود الأجنبية

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DRAFTING CONTRACTS



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1-WHAT IS A CONTRACT?

A contract is a legally enforceable agreement between two or more parties. The core of most contracts is a set of mutual promises (in legal terminology, "consideration"). The promises made by the parties define the rights and obligations of the parties.

Contracts are enforceable in the courts. If one party meets its contractual obligations and the other party doesn't ("breaches the contract"), the non breaching party is entitled to receive relief through the court.

Example: Developer promised to pay Graphic Designer \$1000 for creating certain promotional materials for Developer's multimedia work. Graphic Designer created the materials and delivered them to Developer, as required in the contract. Developer admits that the materials meet the contract specifications. If Developer does not pay Graphic Designer, Graphic Designer can go to court and get a judgment against Developer for breach of contract.

Generally, the non breaching party's remedy for breach of contract is money damages that will put the non breaching party in the position it would have enjoyed if the contract had been performed. Under special circumstances, a court will order the breaching party to perform its contractual obligations.

Because contracts are enforceable, parties who enter into contracts can rely on contracts in structuring their business relationships.

Example: Developer entered into a contract with Composer, promising to pay Composer \$4000 for composing a brief composition for Developer's multimedia work. Shortly after Composer started work on the piece for Developer - before Developer paid Composer any money - Composer got an offer from a movie studio to compose all the music for a movie and abandoned Developer's project. Developer had to pay another composer \$6000 to do the work that Composer had contracted to do. Developer can sue Composer and obtain a judgment against Composer for \$2000 (the amount that will result in Developer's obtaining the music for a net cost of \$4000, the contract price).

In this country and most others, businesses have significant flexibility in setting the terms of their contracts. Contracts are, in a sense, private law created by the agreement of the parties. The rights and obligations of the parties are determined by the contract's terms, subject to limits imposed by relevant statutes.

Example: Developer promised to pay Composer \$5000 to create music for Developer's multimedia training work. Composer created the music and delivered it to Developer, as required in the contract. Developer did not pay Composer, so Composer sued Developer for breach of contract. Developer's defense was "Composer did what she promised to do, but I never should have agreed to pay her \$5000 for that work. \$2000 is a fair price." The court will enforce Developer's promise to pay Composer \$5000

WRITTEN CONTRACTS

A deal done on a handshake - "You do X for me, and I'll pay you Y" - is a contract, because it is a legally enforceable agreement involving an exchange of promises. Most contracts are enforceable whether they are oral or written. Nonetheless, you should always have written contracts for all your business relationships.

There are several reasons why written contracts are better than oral contracts:

The process of writing down the contract's terms and signing the contract forces both parties to think about - and be precise about - the obligations they are undertaking. With an oral contract, it is too easy for both parties to say "yes" and then have second thoughts.

When the terms of a contract are written down, the parties are likely to create a more complete and thorough agreement than they would by oral agreement. A hastily made oral agreement is likely to have gaps that will have to be resolved later - when the relationship may have deteriorated.

With an oral contact, the parties may have different recollections of what they agreed on (just as two witnesses to a car accident will disagree over what happened). A written agreement eliminates disputes over who promised what.

Some types of contracts must be in writing to be enforced. The Copyright Act requires a copyright assignment or exclusive license to be in writing (see "Assignments" and "Licenses" in the Ownership of Copyright Law Summary). State law requirements vary from state to state, but in most states, a contract for the sale of goods for \$500 or more must be in writing.

If you have to go to court to enforce a contract or get damages, a written contract will mean less dispute about the contract's terms.

2-OFFER AND ACCEPTANCE

A contract is formed when one party (the "offeror") makes an offer which is accepted by the other party (the "offeree"). An offer - a proposal to form a contract - can be as simple as the words, "I'll wash your car for you for \$5." An acceptance - the offeree's assent to the terms of the offer - can be as simple as, "You've got a deal." Sometimes acceptance can be shown by conduct rather than by words.

When an offer has been made, no contract is formed until the offeree accepts the offer. When you make an offer, never assume that the offeree will accept the offer. Contractual liability is based on consent.

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